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IN THE

# Supreme Court of the United States

October Term, 1955

No. 611

MALLONEE, BUCKLIN and FERGUS, Shareholders' Protective Committee; LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION; HOME INVESTMENT COMPANY, as representatives of a class of homeowners; TITLE SERVICE COMPANY, as trustee on homeowners' trust deeds; ROBERT H. WALLIS; FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF BELLFLOWER; and JOHN D. WILLHOIT,

*Petitioners,*

*vs.*

FEDERAL HOME LOAN BANK OF SAN FRANCISCO; W. W. McALLISTER and WILLIAM K. DIVERS, as members of the Home Loan Bank Board; A. V. AMMANN; GEORGE K. BRAMLEY; and the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a federal corporation,

*Respondents.*

## PETITION FOR REHEARING OF DENIAL OF CERTIORARI PETITIONS.

*To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:*

Petitioners respectfully request a rehearing of their petitions for certiorari, filed January 6, 1956, and denied February 27, 1956.

## Statement.

Since denial of certiorari, 3 direct appeals to this Court, under 28 U. S. C. §1254(2), have been docketed on March 2, 1956, as October Term, 1955, No. 731, and are now pending.

Such direct appeals were (under said §1254(2)) available to only 3 of the 7 groups of petitioners for certiorari.[1]

The direct appeals present other substantial grounds available to said 3 petitioners, *but not included in said denied certiorari petitions,* and never previously presented to this Court.

Such grounds are invalidation by the Court of Appeals in 1955 of California State foreclosure and quiet title statutes as repugnant to laws of the United States, which were repealed by Congress in 1954.[2]

## Question Presented.

Should this Court, upon consideration of direct appeals under 28 U. S. C. §1254(2), also consider certiorari petitions of other parties to the same litigation, whose rights will be decided by such appeals, but who are not, and cannot be, appellants therein?

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[1]Petitioners Long Beach Federal Savings and Loan Association, Title Service Company, and Home Investment Company, as representatives of the class of 8,000 homeowners.

[2]See Jurisdictional Statement, October Term, 1955, No. 731, pp. 10-13.

## Argument.

Three direct appeals, taken after denial of certiorari herein, present substantial *new* grounds never previously presented to this Court, as part of the denied certiorari petitions. Decision thereof by this Court will necessarily affect the rights of 4 groups of petitioners[3] who are not, and cannot be, parties to such direct appeals, but who will yet be bound by the outcome thereof.

Denial of certiorari does not preclude consideration of the subsequent direct appeals by the 3 petitioners who are also appellants. (*Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 172; *Watson v. Employers Liability Assur. Corp.*, 348 U. S. 66, 70.)

But the 4 groups of petitioners who cannot take direct appeals under 28 U. S. C. §1254(2) will not be parties, nor will they participate therein. Yet they are bound thereby.

Under similar circumstances this Court has vacated its previous denials of certiorari and considered the merits as part of its subsequent decisions. (*Bradley Mining Co. v. Boice*, 345 U. S. 932; *Sanitary Refrigerator Co. v. Winters*, 280 U. S. 30, 34, fn. 1; *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U. S. 47, 50; *White v. Texas*, 309 U. S. 631.)

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[3]Mallonee, Bucklin and Fergus, Shareholders' Protective Committee of Long Beach Federal Savings and Loan Association; Robert H. Wallis; First Federal Savings and Loan Association of Bellflower; and John D. Willhoit.

## Conclusion.

This Court is respectfully asked to consider this petition for rehearing of denial of certiorari at the same time that it considers its jurisdiction, or the merits, of the 3 now pending direct appeals (October Term, 1955, No. 731) in this same litigation.

Respectfully submitted,

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F. HENRY NECASEK,

*Attorney for petitioner, Home Investment Company, as representatives of a class of homeowners,*

JOHN D. MILLER and
CHARLES K. CHAPMAN,

*Attorneys for petitioner, Title Service Company, as trustee on homeowners' trust deeds,*

RAYMOND TREMAINE,

*Attorney for petitioner, Robert H. Wallis,*

EMMETT E. DOHERTY,

*Attorney for petitioner, John D. Willhoit.*

## Certificate of Counsel.

Each of the undersigned hereby respectively certify that the foregoing joint petition for rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 58 of the Rules of the United States Supreme Court.

CHARLES K. CHAPMAN,

WYCKOFF WESTOVER,

F. HENRY NECASEK,

RAYMOND TREMAINE,

EMMETT E. DOHERTY.